

**REMARKS**

Claims 1-10, 12-19 and 21-29 are now pending in the above-captioned application.

**ELECTION/RESTRICTION REQUIREMENT**

The Examiner has selected claims 1-3, 5, 6, 9-11, 13, 15, 16, 21, and 29 as reading on the elected species. Claim 1 was indicated Generic.

**INFORMATION DISCLOSURE STATEMENT**

References relating to the FAB-FORM FASTUBE product were submitted by applicant's previous counsel in a Prior IDS. The Examiner claims that no dates are provided in the IDS. The Form PTO-1449 recites dates for two of the references, January 31, 2003, and a copyright date of 2004 for the website. No reference date was apparently available for the third reference. Applicant has submitted copies of the references and all known available data concerning these references. Thus, applicant has complied with the duty of disclosure under Rule 56. Applicant has no further information to provide regarding these references.

**SUBSTITUTE SPECIFICATION**

The Examiner has refused to enter the substitute specification on the grounds there are a "number of discrepancies" in the Specification. However, the Examiner lists only three. In particular, the Examiner notes that references numeral 5 was used to refer to two different elements, as was reference numeral 14. These discrepancies have been corrected in the attached SUBSTITUE SPECIFICATION filed herewith.

With regard to the third discrepancy, the Examiner argues that elements 31 and 314 should use the same reference numeral, as both refer to a tubular segment. This is a typographical error, which has been corrected in the attached SUBSTITUTE SPECIFICATION.

Since the application includes a number of different embodiments, applicant has attempted to identify tubular segments in the different embodiments using different (but similarly formatted) reference numerals. Thus for example, the tubular segment now labeled 314 is used in Figures 4 and 31 (the second embodiment), as they describe the same embodiment. However, in other embodiments, the tubular segment is assigned a different reference numeral.

As the embodiments have different features, the tubular segments are not necessarily identical, and thus should not have identical reference numerals. Applicant has corrected typographical errors with regard to the identification of the tubular segments, but submits that the tubular segments in all of the embodiments should not have the same reference numerals, as they describe different or potentially different tubular segments.

The Examiner noted there were a “number of discrepancies” in the Specification, but presented only these three. Applicant has reviewed the Specification and corrected any additional discrepancies noticed. If the Examiner is aware of any other discrepancy, applicant requests that these be explicitly noted and brought to applicant’s attention.

## **DRAWINGS**

The SUBSTITUTE DRAWINGS were refused entry on similar grounds as the objection to the SSUBSTITUTE SPECIFICATION. Applicant has corrected the errors noted with regard to reference numeral 5. Reference numeral 31 has been deleted. However, as noted above, the presence of reference numerals 312 and 314 do not comprise an error, as these refer to tubular segments in different embodiments, where 312 refers to a tubular segment in a first embodiment, and 314 a tubular segment in a second embodiment.

Entry of the corrected SUBSTITUTE DRAWINGS is respectfully requested.

**REJECTION UNDER 35 U.S.C. §112, First Paragraph**

Claims 1-3, 5, 6, 9-11, 13, 15, 16, 21, and 29 were rejected under 35 U.S.C. §112, first paragraph due to some minor informalities which have been corrected by the above amendment.

The distinguishing feature of the present invention is the concept of the *Fencebag*, a bag-like flexible tube, which is supported by a central rebar post and filled with concrete to form a post.

The Examiner argues that the Specification, as originally filed, does not provide support for a non-rigid tubular segment, which is foldable and rollable on itself in any axis, or rollable in any axis. The Examiner also objects to the use of thickness range in claims 2 and 13.

The claim language in question was added to the claims in response to the rejection in the parent application in view of the KIM reference, which disclosed a structural steel tube filled with concrete. However, the KIM reference has not been applied to the claims of the present application. Applicant has amended the claims to recite that the tubular segment is pliable, a limitation clearly taught in the Specification as originally filed.

Applicant submits that the deleted terms are also supported in the Specification, if not literally on a word-by-word basis. Again, this claim language was arrived at after an in-person interview with a different Examiner in the parent application in an attempt to further distinguish over the KIM reference in the parent application. During that interview, the Examiner in the parent application expressed an opinion that the tube of KIM was pliable (which applicant respectfully disputes). The additional claim language now deleted was in fact redundant. The term pliable is sufficient to describe applicant's *Fencebag* product.

Applicant has also amended the thickness range in claims 2 and 13 as requested by the Examiner.

**REJECTION UNDER 35 U.S.C. §112, Second Paragraph**

Claims 5, 6, 13, 15, and 16 were rejected under 35 U.S.C. §112, second paragraph due to some minor informalities which have been corrected by the above amendment.

**REJECTION UNDER 35 U.S.C. §102**

Claim 29 was rejected under 35 U.S.C. §102(b) as being anticipated by Grafton '206. Applicant respectfully traverses this rejection.

In order to be complete, an anticipation-type rejection must contain two elements:

1. The reference must qualify as "Prior Art" under one of the sections of 35 U.S.C. §102; and
2. The reference must explicitly teach *ALL* of the features of the claimed invention.

Grafton has an effective date more than one year prior to applicant's earliest filing date.

Grafton discloses a concrete structure for use in shore protection. Grafton uses a fabric container with a support frame surrounding the container to support the container during the pour. This reference is much better than the KIM reference applied in the parent case, as Grafton at least shows the use of a flexible fabric material as a concrete form.

It would appear from the Grafton reference that the broad concept of using a flexible tube as a concrete form is known in the art. However, Grafton does not teach or suggest an internal structural support using the concrete rebar which later forms a structural part of the concrete structure. Rather, Grafton uses fiber reinforced concrete or throws in sections of rebar after the pour for reinforcement.

Grafton recites:

**"The concrete may be reinforced with various fibers of the type previously described, or conventional steel reinforcement bars 61 may be inserted into the concrete in the fabric**

container through the top spout 50 after the hose 60 has been removed as shown in FIG. 8 for added strength.” (Grafton, Col. 7, lines 37-43, emphasis added)

Thus, Grafton does not teach or suggest the idea of using an internal reinforcing bar as both rebar for the finished structure, and a means of supporting the flexible concrete form. The distinction is more than trivial. In Grafton, an external bracing system needs to be set up, then attached to the flexible form, and then concrete poured in. Once set, the external bracing system then has to be removed, necessitating a return visit by workers to remove the external bracing.

In the present invention, the internal brace provides support and acts as a metal reinforcing bar. Once set up, the pliable tubular member can be filled with concrete and then left. The pliable tubular member can be left to weather away, and no return visit is required to remove forms or form supports.

Applicant has amended all of the claims to more clearly recite the form of the present invention including the internal metal support. Thus, applicant submits that the claims, as amended, are distinguishable over the Prior Art of record.

### **REJECTION UNDER 35 U.S.C. §103**

Claims 1-3, 5, 6, 10, 13, 15, 16, and 29 were rejected under 35 U.S.C. §103(a) as being unpatentable over Grafton in view of Lafleur. Applicant respectfully traverses this rejection.

In order to be complete, an obviousness-type rejection must contain two elements:

1. The references, as combined, must show all the features of the claimed invention (all elements rule); and
2. A *proper* motivation to combine the references must be provided.

In this instance, neither element is present.

As noted above, Grafton does not disclose the concept of using an internal rebar as a support for a bag-like form casting, which also serves as a rebar for the resultant concrete product. The claims have been amended to include this limitation.

Lafleur is applied to Grafton to show specific use of polymer materials of the thickness ranges disclosed in the present application. However, Lafleur is a Patent teaching only how to make plastic bags for general use. No mention is made in Lafleur of using plastic bags as concrete forms.

Grafton is directed toward using burlap, not plastic, so it is not clear what motivation, other than hindsight reconstruction, exists for combining a concrete form Patent with a plastic bag Patent.

Lafleur does not teach or suggest applicant's internally braced structure using the rebar to support a flexible concrete form, as Lafleur is not directed toward concrete forms.

Thus, the claims, as amended, are distinguishable over Grafton, with or without Lafleur.

Claims 1, 9-11 and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Turzillo in view of Grafton. Applicant respectfully traverses this rejection.

Applicant's previous comments concerning Grafton are incorporated here.

Turzillo is noteworthy in that he appears to teach using a flexible material as part of his form. However, this material is porous and supported by a grid framework, as the forms used (walls and square beams) will not hold their shape otherwise. In one embodiment, he applies this framework internally, but attaches the flexible member to the framework with a series of ties.

Turzillo teaches:

Referring first to FIGS. 25 and 26, the modified means for forming a concrete wall structure involves first providing an **open-topped porous fabric bag 55** of requisite **rectangular shape**, size and thickness, with the **rectangular grid 56 centrally positioned between uniformly spaced bag walls 55a, 55a**. The matrix grid combination may be rigidly maintained in upright condition at the situs by anchoring projection of rigid rod extensions 59a on the grid into the earth of the situs, as best shown in dotted lines. Additional anchor rods 59b, 59b may be extended from the grid into the earth at various angles, as required for fixedly maintaining the grid in vertical

position for purposes to be described. Before or after thus rigidly positioning the matrix grid, depending upon working conditions, a **multiplicity of uniformly spaced wire or other tension-restraining tie-elements** 60, 60 may be anchoringly attached to the grid to have opposite end extensions 60a of each element projected through the opposing bag walls 55a. The extensions 60a may have selectively located stop means 60b thereon, for limiting subsequent outward expansion or distension of the bag walls for a predetermined thickness of wall to be constructed.

After vertically affixing the matrix grid 56, as shown in FIGS. 25 and 26, fluid hydraulic cement mortar is pumped or fed into the bottom of bag means 55, and pumping is continued until the bag means is filled to desired height. As before, the fluid pressure expands the bag walls 55a to predetermined generally uniform extent, determined by the locations of the stop means 60b and pumping is otherwise controlled in conjunction with the increasing weight of the fluid mortar to distend the bag walls outwardly in the areas between said spaced stop means (see FIG. 28). FIGS. 27 and 28 illustrate the resultantly formed, concrete wall structure 55c.

Turzillo is applied to the claims to allegedly show applicant's stabilizing means. However, the stabilizing means of Turzillo is a bar extending at an angle to his lattice so as to stabilize the mesh. Since he is directed toward making a wall, such angled braces are necessary.

Moreover, Turzillo does not teach or suggest using a tubular segment for forming a structural member. In the present invention, the weight of the concrete fills the tubular segment and the equal pressure forces the segment to form a uniform shape in an upright condition. The rebar holds the form in place for pouring and holds the form upright. Turzillo, however, relies upon a mesh to hold the form upright, as the idea of using the flexible form to make a uniform shape did not occur to him. Since Turzillo does not teach or suggest a round column, such mesh (either external or internal) is required in his design.

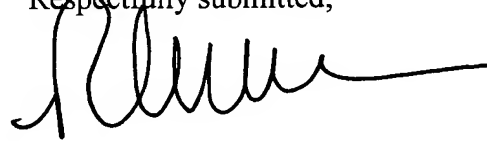
The form positioning and dampening assembly of the present invention is illustrated in Applicant's Figure 31. As noted in the Specification, this assembly dampens vibrations during the pour and positions the tubular form properly in relation to the rebar. In contrast, the angled bars of Turzillo anchor his mesh to the ground to position the mesh, not the bag material.

**CONCLUSION**

The claims have been amended to more clearly recited the reinforcing member and support is located within the pliable tubular segment, a feature neither taught nor suggested by the Prior Art of record. The Prior Art references teach only external bracing of a flexible form, or if internal, for a linear wall requiring a series of tiebacks. Thus, applicant submits that all of the pending claims are now in condition for allowance.

An early Notice of Allowance is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Bell', with a long horizontal flourish extending to the right.

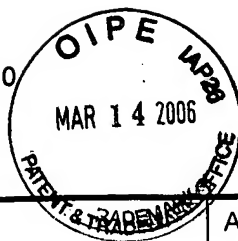
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<b>AMENDMENT UNDER 37 C.F.R. §1.112</b>  <b>DRAWING AMENDMENT</b>	Attorney Docket Number	MCEJ101.CIP
	First Named Inventor	John D. McEnroe Jr.
	Application Number	10/613,900
	Filing Date	July 2, 2003
	Group Art Unit	3679
	Examiner Name	Ernesto Garcia
	RPB Reference Number	FENCE-0002
for: CASTING FORM FOR A CAST-IN-PLACE STRUCTURAL ELEMENT AND FENCING SYSTEM INCLUDING CAST-IN-PLACE STRUCTURAL ELEMENTS		

Honorable Commissioner of  
 Patents and Trademarks  
 Washington, D.C. 20231

### DRAWING AMENDMENT

Sir:

Applicant amends the drawings as illustrated in on the attached sheets. The following changes have been made to the drawings:

SHEET 1: No Change.

SHEET 2: Element "31" changed to --312--.

SHEET 3: No Change.

SHEET 4: Element "30" changed to --304--; "50" to --504--; "31" to --314--; "31" to --3140--; "5" to --555--; "14" to --444--.

SHEET 5: In Figure 5, element "30" changed to --305--; "50" to --504--; "31" to --315--; "5" to --555--. In Figure 6, "31" to --316--; "30" to --306--; "50" to --506--.

SHEET 6: In Figure 7, element "30" changed to --307--; "50" to --507--; "31" to --317--. In Figure 8, "33" to --338--; "52" to --57--; and reference number 8 added.

SHEET 7: In Figure 9, element "34" changed to --349--; "31" to --319--; reference number 30 deleted. In Figure 10, reference number "60" changed to --6010--; "31" to --3110--; "62" to --620--; "61a" to --610a--; "61b" to --610b--; "61c" to --610c--; "61d" to --610d--; "64" to --640--.

SHEET 8: Figures 11 & 12, element "30" changed to --3011--; "31" to --3111--. Figure 13, element "60" changed to --6011--. Figure 14, element "31" changed to --314-- and reference numeral "14" added; old reference numeral "14" changed to --444--.

SHEET 9: "30" changed to --3015--; "31" changed to --314--; "50" deleted; reference numeral "86" added.

SHEET 10: Figures 16 and 17, element "31" changed to --316--.

SHEET 11: Figure 18, element "31" changed to --3118--; reference numeral "101" added; Figure 19, element "31" changed to --3118--; "30" and "37" deleted; Figure 20, elements "30" and "31" changed to --3020--; "37" deleted.

SHEET 12: Figures 21-23, "30" changed to --3021--, "31" and "37" deleted..

SHEET 13: Figures 24-26, element "31" changed to --3125--.

SHEET 14: Figures 27 & 28, element "31" changed to --3127--; reference numeral "37" deleted, overall reference numeral "3027" added.

SHEET 15: Figure 29; element "31" changed to --3129--.

SHEET 16: Figure 31, element "31" changed to --314--; overall reference numeral "3140" added. Figure 32, reference numeral "32" added.

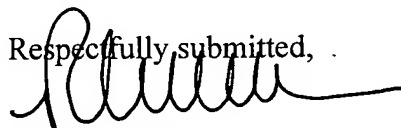
SHEET 17: No Change.

SHEET 18: No Change.

SHEET 19: No Change.

SHEET 20: No Change.

Approval and Entry of Applicant's Drawing Amendment is respectfully requested.

Respectfully submitted,  


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